COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its Own Motion as to the Propriety of the Rates and Charges Set Forth in the Following Tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on December 11, 1998, to become effective January 10, 1999, by New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts

DTE 98-57

SURREBUTTAL TESTIMONY OF THOMAS LoFRISCO

ON BEHALF OF

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

November 5, 1999

1Q PLEASE STATE YOUR NAME, PRESENT POSITION AND BUSINESS ADDRESS.

A1. My name is Thomas LoFrisco. I am employed by AT&T as the District Manager of the Access and Local Landscape group for the Northeast. My address is AT&T, 32 Avenue of the Americas - Room 2060, New York, New York 10013.

1Q ARE YOU THE SAME TOM LOFRISCO WHO FILED DIRECT TESTIMONY ON BEHALF OF AT&T IN THIS PROCEEDING DATED JULY 26, 1999?

A1. Yes.

1Q ON WHOSE BEHALF ARE YOU SUBMITTING TESTIMONY?

A1. I am submitting this surrebuttal testimony on behalf of AT&T Communications of New England, Inc. and its affiliates (collectively "AT&T").

1Q WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A1. My surrebuttal testimony responds to certain assertions made by witness Amy Stern in her rebuttal testimony on behalf Bell Atlantic-Massachusetts ("BA-MA") dated August 16, 1999. In addition, my surrebuttal testimony provides further discussion of some of the problems I outlined in my direct testimony concerning BA-MA's Tariff No. 17, which I had an opportunity to discuss with BA-MA personnel in connection with resolving a discovery dispute between AT&T and BA-MA. Unfortunately, while the discussions clarified certain inconsistencies and inadequacies in Tariff No. 17, they also highlighted other problems and anticompetitive features of the Tariff. Furthermore, BA-MA has not to my knowledge made any attempt to clarify the Tariff language itself as a result of our discussions, leaving doubt about the reliability of the explanations I received and the ability of AT&T and others to operate under the tariff going forward.

1Q AMY STERN CONTENDS IN HER REBUTTAL TESTIMONY (PAGE 19) THAT SO-CALLED "SPECIAL CONSTRUCTION" COSTS SHOULD BE INCLUDED IN THE TARIFF. HAS MS. STERN ADEQUATELY JUSTIFIED BA-MA'S INCLUSION OF TARIFF PROVISIONS PERMITTING IT TO CHARGE FOR "SPECIAL CONSTRUCTION"?

A1. Not at all. Ms. Stern claims that BA-MA should be allowed to include a charge for "special construction" because such special construction charges were allegedly not included in the setting of UNE rates. Ms. Stern has the right principle, but misses the point. The validity of so-called "special construction" charges certainly depends upon consistent application of the concept of "special construction" in both establishing and applying the rates. Tariff No. 17, however, uses the term "special construction" in such an open-ended and subjective manner that it is readily subject to potential abuse by BA-MA, leading to over-recovery by BA-MA.

1Q PLEASE EXPLAIN HOW THE PROVISIONS IN TARIFF NO. 17 ALLOWING FOR SPECIAL CONSTRUCTION CHARGES COULD LEAD TO ABUSE AND OVER-RECOVERY BY BA-MA?

Let me demonstrate the problem of over recovery using the graph below. The flat horizontal line depicts the average rate for a service as offered by the tariff and as set by the Department. The upward-sloping line represents the actual costs that BA would see in a forward-looking environment. The line slopes upward, reflecting that provisioning a particular service will vary in cost depending upon the circumstances as depicted on the X-axis from the least expensive installation to most expensive installation.

Note that as BA provisions services in a forward-looking environment, on some occasions a product or service will cost less than the forward-looking TELRIC rate, and on others it will cost more than the forward-looking TELRIC rate. The danger of so-called "special construction" is that BA will deem any case in which the cost of provisioning a service exceeds the TELRIC rate set by the Department to be an instance of "Special Construction." But the concept of an average rate presumes that some cases cost more, and some cases cost less, than the average. The open-ended, overly-subjective definition of "special construction" in the tariff thus creates the potential for abuse by BA-MA. If BA-MA charges the entire amount of special construction in case where the product or service costs more than the TELRIC rate set by the Department (see point A), BA-MA will over-recover its costs on the full volume of orders for the particular product or service. This is so because while BA-MA would recover more than the average rate in the case of normal, but above average cost cases, BA offers no counter-balancing credits to CLECs where the actual costs to provision a service in a forward-looking environment are less than the average costs (See D). Although BA-MA and Ms. Stern may claim that "special construction" charges under Tariff No. 17 do not (and will not when BA applies them going forward) include the category of merely above-average construction costs, the tariff definition of special construction is open-ended and controlled by BA's subjective interpretation. The danger for abuse is apparent. This danger has only increased with the Department's recent decision directing BA-MA to modify its non-recurring cost model in manner that will substantially reduce the non-recurring

charges BA-MA will be entitled to charge CLECs.

2Q HOW SHOULD THE TARIFF BE MODIFIED TO ADDRESS THE PROBLEM?

A1. Not surprisingly, BA-MA has not proposed a methodology for ensuring that costs will not be over-recovered. Unless a mechanism for limiting potential abuse and over-recovery is added to the tariff, BA should be required to remove section 3.1.7.A and similar sections allowing for open-ended "special construction" charges from the tariff. One possible solution, would be to define "special construction" as limited to extraordinary instances where construction requires work activities to be performed, or equipment to be installed, which are not involved in a typical case of provisioning the particular product or service (construing the "typical case" most broadly). BA-MA also should not be permitted to condition its acceptance or provisioning of an order on an agreement by the ordering CLEC that the order will require "special construction," and there should be a procedure for resolving billing disputes concerning special construction charges, such as the dispute resolution procedure other AT&T witnesses have recommended in this proceeding.

1Q WHAT WEIGHT SHOULD THE DEPARTMENT GIVE TO AMY STERNS' RESPONSE IN HER REBUTTAL TESTIMONY (PAGE 19-20) TO YOUR CRITICISM THAT THE FULL NONRECURRING CHARGES SHOULD NOT BE APPLIED TO CANCELED ORDERS?

A1. None. Amy Stern simply repeats the same reasoning that I have proven incorrect. Ms. Sterns' testimony makes clear, as I noted in my direct testimony, that BA-MA does not rely on cause-causative principles to develop the costs for cancellations of orders. The very nature of a cancelled order dictates that not all activities have been performed, so charging for all nonrecurring costs is unjustified.

There is absolutely no evidence that the costs BA-MA claims to incur to process a cancellation in any way approximate the non-recurring charges for functions BA-MA has not yet performed, particularly where the order is cancelled early in the provisioning process. Indeed, Ms. Stern justifies treating all cancelled orders in the same manner, based upon the activities BA-MA must perform when it receives a cancellation within the final minutes before requested due time. See Stern Rebuttal at 20, lines 7-20. Not only is her approach nonsensical, it is fully inconsistent with the approach taken by Bell Atlantic in NY. The NY Tariff No. 916 states, at Section 5.11.E.2.a:

"Certain Telephone Company critical dates are associated with an Unbundled Network Element or UNE-Platform provisioning interval, whether Standard or Negotiated. These dates are used by the Telephone Company to monitor the progress of the provisioning process. At any point in the Unbundling Network Element or UNE-Platform interval, the Telephone Company is able to determine which critical date was last passed and can thus determine what percentage of the Telephone Company's provisioning costs have been incurred as of the critical date."

1Q IN CONNECTION WITH RESOLVING A DISCOVERY DISPUTE BETWEEN AT&T AND BELL ATLANTIC, YOU PARTICIPATED IN DISCUSSIONS WITH BELL ATLANTIC PERSONNEL CONCERNING APPLICATION OF THE TARIFF. HAVE THOSE DISCUSSIONS WITH BELL ATLANTIC HELPED TO CLARIFY HOW BA-MA INTENDS TO CHARGE FOR SERVICES OFFERED IN THE TARIFF?

A1. I participated in two conversations with Bell Atlantic. The conversations have helped me to understand how BA-MA intended (during those conversations) to apply rates, but have further increased my concern that the tariff is often unclear, contradictory and anticompetitive.

I have learned that BA-MA intends to charge AT&T Intrastate Terminating Access charges, instead of reciprocal compensation charges, when an AT&T customer places an Intra-Lata Toll call that is terminated on BA-MA's network. BA-MA has stated that AT&T will not be allowed to charge similar access charges when the call is placed in

the reverse direction (i.e., a BA customer makes an Intra-Lata Toll call to an AT&T customer served using UNEs). Such discriminatory rate application is improper and unfair, not explained in the tariff, and should not be based on BA's discretion.

While AT&T's conversations with BA-MA have been somewhat valuable in uncovering how BA-MA intends to charge for rates that are included in the tariff, the conversations have not resulted in improvements to the tariff itself. I am not aware that any of the clarifications I received during our discussions with BA have been reflected by BA in its most recent version of the tariff submitted on or about August 27, 1999. Instead, the tariff is still unclear and contradictory. This gives me some pause as to whether I can rely on the clarification I received, and I find it particularly problematic that other CLECs who did not participate in the calls are left to review the tariff in its current form. Although parties in this proceeding may get some clarification by reviewing the spreadsheet I developed, and BA completed (but has not yet provided in final form) in connection with our discussions, other future users of the tariff would not have the benefit of that document.

BA should revise the tariff to clearly describe how the rates are applied. I suggest that when BA revise the tariff, it include a table that clearly describes how usage-based rates apply to different call types.

1Q HOW ELSE HAVE CONVERSATIONS WITH BELL ATLANTIC PROVIDED FURTHER EVIDENCE THAT THE TARIFF IS UNCLEAR?

The AIN Trigger charge provides another example. The AIN Trigger-per query charge of $.000300 is shown on Part M, Section 2, Page 9 of the tariff. During conversations with Bell Atlantic, I learned that BA-MA intends to charge this for each query that is generated to support an AIN service.

One portion of the workpapers that support the charge, however, shows that the charge should be rated on a per message basis, not a per query basis. See Cost Study Part E, Workpaper 1.0, Page 1, Lines 20, 21 and 22 which shows that the charge is rated on a "per AIN message" basis. The distinction between "query" and "message" is important because there are multiple queries per message.

An additional discrepancy is found on line 19 of that same page. Line 19 shows that the charges were actually developed by taking total costs and dividing those total costs by numbers of calls, not numbers of messages and not numbers of queries.

This simple example serves to demonstrate that Bell Atlantic's application of the charges is sometimes disconnected from its own methodology for developing the rates. The rate is calculated on a per call basis, listed on a per message basis, and applied on a per query basis.

2Q DOES THIS CONCLUDE YOUR TESTIMONY?

A1. Yes.